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SUBJECT: PARTIES SCRAMBLE TO COMPLY WITH POLITICAL PARTIES  
ACT

REF: NAIROBI 2613

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COMMENT  
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¶1. Kenya's notoriously disorganized political parties are scrambling to comply with a series of administrative, organizational, and financial requirements imposed by the Political Parties Act (the Act) before the December 31 deadline. The Act aims to bring much-needed order to Kenya's party system, long characterized by moribund party structures, murky finances, and a lack of transparency. Most major parties have yet to comply with the Act (reftel). The governing parties, the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), are scrambling to transform their structures and overcome internal political issues to comply (septel). The Act is no panacea for what ails Kenya's political system, but it is a good start to curbing disruptive behavior among elected officials and to achieving more functional and better regulated parties, keys to Kenya's democratic consolidation. End Comment.

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The Political Parties Act  
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¶2. After multi-party politics came to Kenya in 1992, political parties mushroomed. By 2007 over 300 political parties were registered; 117 took part in last year's general election. Many parties were dormant between elections and emerged at election-time for the sole purpose of collecting fees (essentially bribes) from aspiring candidates in exchange for a place on the party ticket. Even well-established parties have weak institutional capacity and opaque governance practices; often they served as little more than personal vehicles for their leader. The Societies Act under which parties previously registered provided a weak legal framework for regulating political parties and imposed few requirements for a party to continue its existence. Political parties financing was opaque and not subject to any disclosure requirements. The absence of public party financing led many office holders to resort to corrupt public dealings to finance their political parties. The Goldenberg and Anglo-Leasing scandals were, in part, driven by the need for campaign slush funds. In addition, elected officials switched parties frequently with impunity, weakening party discipline, a key to a functional parliament. Furthermore, after the failed constitutional referendum of 2005, opposition Members of Parliament joined the government in defiance of their party, blurring the lines between government and opposition.

13. Civil society realized that strong, transparent, and capable political parties are critical to entrenching democracy. It had been advocating, unsuccessfully, for framework legislation to regulate better political party governance and finances since the advent of multi-party politics. The movement gained critical mass in 2005, when a number of non-governmental organizations, with USG financial support, formed the Coalition for Accountable Political Financing to lobby for legislation to make more transparent the operations and financing of political parties. The resulting Political Parties Act (the Act), enacted in October 2007, was signed into law by President Kibaki in March 2008. It came into force on July 1.

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Goals  
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14. The Act's primary goals are to promote political parties with national outlooks and membership, with transparent internal governance structures and financing, and that hold regular and transparent intra-party elections. The Act treats political parties as quasi-public institutions; it increases record-keeping requirements for parties and mandates annual audits of party finances, which must be made public. It forbids civil servants and army personnel from serving as founding members of parties or holding party office, as well as actively engaging in political party activity or publicly endorsing candidates. The Act also bans civil servants from political activity which gives the appearance of compromising the political neutrality of the

NAIROBI 00002696 002 OF 004

civil servant. It addresses gender balance by requiring that each gender be represented in at least one-third of party leadership positions.

15. The Act regulates behavior of elected officials in important ways; it prevents opposition politicians from accepting positions in government without their party approval, and declares vacant elected offices when the holder resigns from the party which supported his/her election bid. The latter provides a particularly strong incentive to maintain party loyalty; no incumbent wants to face an electorate that rejected 70 percent of incumbent MPs at the 2007 general election.

16. To achieve its goals, the Act forbids party names which hint at exclusiveness on tribal, regional, gender or other grounds. It also requires parties to have at least 200 members in each province, and at least one founding member in each of Kenya's 149 districts, the political subdivision directly below the province. The Act also requires parties to maintain a national network of offices. To strengthen internal governance of parties, the Act requires that each party amend its constitution to provide for, among other things: the composition and powers of the governing party bodies, the titles of officers, terms of office and method of election, appointment, and dismissal of party officers. It also requires parties to state clearly the procedures for amending constitutions. Each of these issues have bedeviled parties under the more lax registration the Societies Act provided, often resulting in lawsuits.

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Finance Reform  
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17. The Act allows parties to fund-raise through membership fees and donations by private individuals. It caps individual donations at approximately USD 60,000 per year (5,000,000 Ksh), although the Act allows a one-time exemption for founding members to donate in excess of the limit in the first year of registration under the Act. Parties are banned from accepting donations from non-Kenyans, as well as from Kenyan and international non-governmental organizations.

¶8. The Act creates a Political Parties Fund (the Fund) that will be financed through the government's budget. The Fund will be allocated as follows: 15 percent of the Fund will be distributed equally among all eligible political parties; 80 percent of the Fund will be distributed to parties proportional to the total number of votes secured at the last general election by party candidates at all levels; and, five per cent of the Fund will be used to cover administrative costs.

¶9. Parties are required to make annual public disclosures of all donations, from any source. The accounts of each party will be audited every year by the government's Auditor General, who will forward these audits to the Parliament and the Registrar. The Act enables the Registrar to request the Auditor to carry out an audit of a political party. The Registrar will publish an annual report of the audited accounts of each political party. False declarations shall be punishable by fine and/or prison sentence.

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Registration Issues  
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¶10. The Act requires all parties to re-register with a newly-created Political Parties Registrar (the Registrar), which is part of the Electoral Commission of Kenya. Re-registration requires payment of a fee of approximately USD 80,000 (Ksh 600,000) - a fee which many small parties complain is prohibitive. The Registrar is entitled to issue provisional certificates of registration while it considers an application, but must make a decision within 180 days. The Registrar is permitted to de-register parties if, subsequent to registration, they run afoul of the Act's requirements that parties have a national outlook or fail to comply with financing rules. The Act recognizes pre- and post-election coalitions and requires that parties to such agreements submit a copy to the Registrar. The Act also recognizes that individual parties may act as "corporate members" of larger political groupings while maintaining the

NAIROBI 00002696 003 OF 004

ability to maintain their own structures. The Act creates a Political Party Tribunal (the Tribunal), which is empowered to hear appeals of decisions of the Registrar. The Tribunal will decide intra-party disputes, disputes among political parties, as well as disputes between coalition partners. Decisions of the Tribunal are final and not subject to appeal.

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Impact on Parties  
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¶11. The Act imposes a number of requirements that will challenge the way parties do business. Thus it poses significant challenges to even the biggest parties to ensure that they comply. For example, few parties, with the exception of the Kenyan African National Union (which built up a vast grassroots network over its twenty years of one-party-rule), have a national network of members and offices, which requires a significant investment in time and money. And, even KANU's network has weakened after it lost its grip on power in 2002. In addition, party governance has often been weak, with de facto leaders deciding policy in place of de jure party decision-making bodies. Under the Act, subversion of de jure party bodies can easily result in a suit at the Political Parties Tribunal, which promises to provide a streamlined conflict resolution mechanism.

¶12. Parties have been used to very lax controls on their finances and a complete lack of transparency to the public. Also, many party constitutions do not contain structures that comply with the Act, forcing these parties to convene party congresses to amend constitutions and also to hold leadership

elections at the national level. Also, parties need to hold elections for leadership of district branches, which has proven a contentious and difficult process. Internal tensions within parties over the leadership requirements of the Act are rife as factions jockey for position at both the national and local levels. Of the more than 300 political parties currently registered, we expect no more than 30 to comply with the act.

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Struggles to Comply  
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¶13. The governing parties, the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), distracted by political squabbles and the responsibility of governing, have yet to come into full compliance with the Act. PNU, formed as a coalition of parties in the run-up to the 2007 elections, is attempting to turn itself into a true party with individual members, a laborious and controversial process. The process hit a roadblock when one of its largest member parties, NARC-Kenya, announced it would not join PNU as a party, but would register as an independent party. NARC-Kenya is the only major party that has complied with the Act. Undeterred by the NARC-Kenya defection, PNU has been holding regional membership drives and plans to hold its local branch elections in early December with its national election to follow on December 19.

¶14. ODM, too, has struggled to comply with the Act. Internal dissent and dissatisfaction with Party leader Raila Odinga's handling of party matters and divisions over who should be named Deputy Party Leader has made internal elections a sensitive matter. Furthermore, Odinga's insistence, as Prime Minister, that the government evict Kalenjin settlers from the Mau Forest watershed and the implement the Waki Report have caused rumors of a walkout by ODM's Rift Valley leadership, and has furthered delayed party elections. Currently ODM expects to hold its district elections in early December with its national convention to follow. More detailed analysis of the internal party dynamics affecting PNU, ODM, and other major parties will follow septel.

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COMMENT  
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¶15. The Acts sets a worthy goal of creating political parties that are durable and transparent institutions, capable of acting as agents of political mobilization on a

NAIROBI 00002696 004 OF 004

national level. However, it is currently aspirational, and, to achieve this goal, Kenya's political class - still dominated by tribal politics and preferring opaque party governance - will need to undergo a cultural shift that will take years to accomplish. More immediately, most parties will need to undertake significant structural changes to comply with the Act. For the vast majority of parties, this process will prove too burdensome. We expect no more than 20 parties to remain active.

¶16. Small parties complain that the Act favors well-established parties. They claim, rightly, that registration fees are prohibitive and the requirement that parties maintain a network of district offices is too expensive for their limited financial capability. They also object to the public financing scheme, which rewards electoral success and which does not aim to level the playing field for smaller parties. We will not mourn the passing of most currently-active political parties. However, we note that these requirements may prove insurmountable barriers to entry for new parties, which are the lifeblood of democracy. The role of the Political Registrar and Political Party Tribunal - which are new institutions and are unlikely to be

affected by the expected reform of the current ECK -- will be key to make the system function effectively. More immediately, the Act's provisions that strip wayward legislators of their seats is likely to play a significant role in strengthening party discipline in parliament (and local councils), and thus significantly strengthen the Grand Coalition's staying power. End Comment.  
RANNEBERGER